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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

April 27, 2011

0531

Mr. Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Genachowski:

When President Franklin D. Roosevelt named the first seven Commissioners of the Federal Communications Commission (FCC) in 1934, the New York Times profiled them in an article titled, “Seven Rulers of the Air.”¹ In the years since this article was published the number of FCC Commissioners has been reduced to five but it is still accurate to say that the FCC’s Commissioners remain, “Rulers of the Air.”² With this power though, comes great responsibility and a commitment to transparency and openness.

On January 26, 2011, the FCC issued an order granting LightSquared Subsidiary LLC (LightSquared) a waiver which allowed it access to a band of spectrum which is adjacent to the spectrum used by the Global Positioning System (GPS).³ On April 6, 2011 the Associated Press reported that this decision could “overpower GPS signals across the U.S. and interfere with everything from airplanes to police cars to consumer navigation devices.”⁴ As a result, strong concerns have been raised that this decision will negatively impact industries dependent on GPS use.

When considering a decision which might have such a strong impact on GPS users and the economy at large, it is essential that that FCC take time to consider all points of view and review as much scientific evidence as possible. I was dismayed however, to find that the FCC originally planned to hold this regulation open for comment for slightly more than one week, from November 19, 2010 to November 29, 2010 and it was only at the urging of outside stakeholders that this period was extended to December 2, 2010.⁵ This accelerated timetable raises further concerns given that Phillip Falcone, the Senior Managing Director of Harbinger

¹ New York Times, SEVEN RULERS OF THE AIR; Biographical Sketches Reveal Background of Radio-Wire Commission, All Trained in Different Fields, July 15, 1934.

² *Id.*

³ Federal Communications Commission, In the Matter of LightSquared Subsidiary LLC, January 26, 2011.

⁴ Associated Press, Joelle Tessler, New U.S. Wireless Network a Hazard for GPS, April 6, 2011.

⁵ Federal Communications Commission, In the Matter of LightSquared Subsidiary LLC, January 26, 2011.

Capital which owns LightSquared, faces an ongoing investigation by the Securities and Exchange Commission into a \$113 million improper transaction, which came to light in November 2010, shortly before the FCC gave notice of its dramatically accelerated timetable.⁶ If anything, this investigation should have led the FCC to proceed with caution rather than step on the gas.

Given this curious set of circumstances and in order to ensure confidence in the FCC's adjudication procedures I respectfully request the following documents:

1. All communications (including e-mails) between Phillip Falcone and any FCC employees.
2. All communications (including e-mails) between any employees of Harbinger Capital and any FCC employees.
3. All communications (including e-mails) between any employees of LightSquared and any FCC employees.
4. All communications (including e-mails) between any employees of firms under contract with Phillip Falcone, Harbinger Capital or LightSquared and any FCC employees.
5. All communications (including e-mails) between any employees of the FCC and the White House related to Phillip Falcone, Harbinger Capital or LightSquared.
6. All communications (including e-mails) between FCC employees regarding Phillip Falcone, Harbinger Capital or LightSquared.

Thank you for your cooperation and attention in this matter. I would appreciate a response by May 10, 2011. If you have any questions, please do not hesitate to contact Chris Lucas for the Committee on the Judiciary at (202) 224-5225.

Sincerely,



Charles E. Grassley
Ranking Member

⁶ Reuters, Matthew Goldstein, Falcone Pays Back Hedge Fund Loan, March 21, 2011.



FEDERAL COMMUNICATIONS COMMISSION

May 31, 2011

JULIUS GENACHOWSKI
CHAIRMAN

The Honorable Charles E. Grassley
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Grassley:

Thank you for your letter regarding the Commission's work with respect to LightSquared's operation in the MSS L-Band. The Commission remains committed to identifying opportunities to make spectrum available for mobile broadband to secure the Nation's leadership in the mobile space and enhance our overall global competitiveness.

As I have stated previously to Congress, the Commission will not permit LightSquared to begin commercial service without first resolving the Commission's concerns about potential widespread harmful interference to GPS devices. The FCC International Bureau's Order of January 26, 2011 (*Order*) outlines our interference concerns, and unambiguously conditions LightSquared's commercial operation on first resolving those challenges to our satisfaction. Under no circumstances would I put at risk our nation's national defense or public safety.

In addition to providing this reassurance, I would like to take this opportunity to correct two misperceptions about the LightSquared matter: first, that the *Order* granted "a waiver which allowed it access to a band of spectrum which is adjacent to the spectrum used by the Global Positioning System (GPS)," and second, that the Commission has acted on a "dramatically accelerated timetable."

The *Order* was not the trigger to permit LightSquared access to the spectrum in the band adjacent to GPS. LightSquared's predecessors have had access to this L-Band satellite spectrum since 1995 and have been authorized to provide terrestrial service since 2004. LightSquared itself gained access to that spectrum in March 2010, after an extensive comment and consideration period.¹ The *Order* merely conditionally waived the Commission's "integrated service rule." Under this conditional waiver, customers of LightSquared's wholesale MSS/ATC service will not be permitted to offer stand-alone terrestrial service at retail unless LightSquared complies with a variety of waiver conditions that ensure it continues to offer an integrated satellite/terrestrial service.

¹ Harbinger Capital Partners Funds (which became LightSquared) and SkyTerra Communications filed transfer-of-license applications with the Commission in April 2009. The Commission began its comment period on June 5, 2009, which featured 30 days for petitions to deny, 10 days for the applicants' responses and 5 days for replies.

It should be no surprise to anyone involved in the LightSquared matter that the company was planning for some time to deploy a major terrestrial network in the spectrum adjacent to GPS. For example, the March 2010 Commission Order transferring control from Skyterra to Harbinger (now LightSquared) explained that Harbinger planned to construct a hybrid satellite-terrestrial network and noted that the terrestrial component of the network would cover 90% of the U.S.² A second March 2010 Order addressed all of the technical standards, including granting the request to increase the power level of the base stations to the exact level the GPS industry is only now criticizing. All interested parties had ample time to comment in advance of these orders. Indeed, the Harbinger/SkyTerra license-transfer proceeding was pending at the Commission for nearly a year.

Moreover, the GPS industry actively participated in these proceedings. As early as July 2009, the U.S. GPS Industry Council raised concerns about potential emissions into the GPS band. One month later, however, the Council filed a joint letter with Skyterra agreeing that the GPS interference issues *had been resolved*.³ The FCC also coordinated its draft decisions with the National Telecommunications and Information Administration, which in turn played its role of coordinating with other interested federal agencies. No formal objections were raised relative to GPS interference. In fact, after the GPS Industry Council withdrew their initial concerns, no one raised *any* objections to the proceedings relative to GPS interference until after the two March orders were adopted and released.

None of this is to say that the current interference concerns are not serious or that we should not take them very seriously. They are and we do. My aim merely is to emphasize that the FCC has proceeded in an open, thorough, and fair way – and that the *Order* about which you inquire must be viewed in context. The *Order* reflects the continued commitment of Commission staff to work thoughtfully and carefully through the various interference issues that have arisen.

Specifically, the *Order* directs LightSquared to organize and participate in a GPS interference technical “working group,” in which interested parties can work directly with LightSquared to resolve potential GPS compatibility problems and interference concerns due to either LightSquared transmissions or GPS receiver. In addition, LightSquared is required to submit monthly progress reports, and must submit a final report no later than June 15, 2011, demonstrating the compatibility of its proposed operations. This process is ongoing, with

² SkyTerra Communications, Inc., Transferor and Harbinger Capital Partners Funds, Transferee Applications for Consent to Transfer Control of SkyTerra Subsidiary, LLC, IB Docket No. 08-184, *Memorandum Opinion and Order and Declaratory Ruling*, 25 FCC Rcd 3059 (IB, OET, WTB, rel. March 25, 2010) at ¶ 56 (“Harbinger’s network will cover 100 percent of the U.S. population via the satellite component and ultimately over 90 percent of the population via its terrestrial component.”)

³ SkyTerra Subsidiary LLC Application for Modification Authority for an Ancillary Terrestrial Component, File No. SAT-MOD-20090429-00047, Call Sign: AMSC-1, File No. SAT-MOD-20090429-00046, Call Sign: S2358, File No. SES-MOD-20090429-00536, Call Sign: E980179, *Order and Authorization*, 25 FCC Rcd 3043 (Int’l Bur., rel. March 26, 2010) at ¶4 and n. 15 (“SkyTerra and USGPS subsequently submitted a joint letter resolving the concerns raised in the USGPS comments.”)

participation from a broad range of stakeholders, including branches of the Armed Forces. LightSquared submitted its initial report on the working group's progress to the FCC on February 25, 2011, and their subsequent reports on March 15, April 15, and May 16, 2011, respectively. The Commission and NTIA will review the final report, and will establish a public comment cycle and give parties further opportunities to present their views. The Commission will then consider thoroughly all the viewpoints and technical evidence included in the final report and the comments filed in response to that report, and will not permit LightSquared to provide commercial service until it is clear that potential GPS interference concerns have been resolved.

I remain focused on ensuring that the Commission takes full advantage of the incredible economic opportunities that underutilized spectrum presents. This includes the opportunity presented by LightSquared, which if successfully realized, would result in billions of dollars of new private investment and the creation of tens of thousands of jobs. More efficient utilization of spectrum has been the source of tremendous growth for our country, and its potential to create jobs and drive the economy for the foreseeable future is substantial. I look forward to working with you and your colleagues to ensure that we use this precious resource wisely, and that we maximize the economic, public safety and national security potential it affords us.

Sincerely,

A handwritten signature in dark ink, appearing to be 'J. Genachowski', with a stylized flourish at the end.

Julius Genachowski